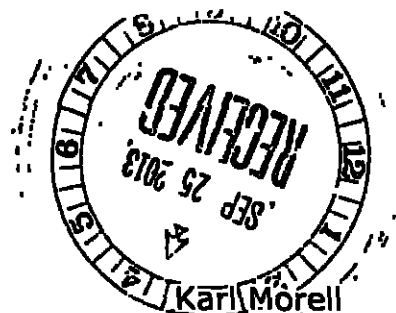




655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

balljanik.com

t 202.638.3307
f 202.783.6947



September 25, 2013

234893

kmorell@balljanik.com

BY HAND DELIVERY

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

RECEIVED

SEP 25 2013

**SURFACE
TRANSPORTATION BOARD**

Re: Finance Docket No. 35746, New Orleans & Gulf Coast Railway
Company, Inc. - Lease Extension Exemption - Union Pacific
Railroad Company

Dear Ms. Brown:

Attached for filing with the Surface Transportation Board please find the original and ten copies of the Verified Notice of Exemption pursuant to the provisions of 49 C.F.R. § 1180.2(d)(4). Enclosed is a check in the amount of \$1,400 to cover the filing fee. Also attached is a CD containing the Notice of Exemption.

If you have any questions, please contact me.

Sincerely,

Karl Morell
Of Counsel

FILED

SEP 25 2013

**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings

SEP 25 2013

Part of
Public Record

BEFORE THE

234893

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35746

ENTERED
Office of Proceedings
SEP 28 2013
Part of
Public Record

NEW ORLEANS & GULF COAST RAILWAY COMPANY, INC
-- LEASE EXTENSION EXEMPTION --
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(4)

FILED
SEP 25 REC'D
SURFACE
TRANSPORTATION BOARD

FILE RECEIVED
SEP 25 2013
SURFACE
TRANSPORTATION BOARD

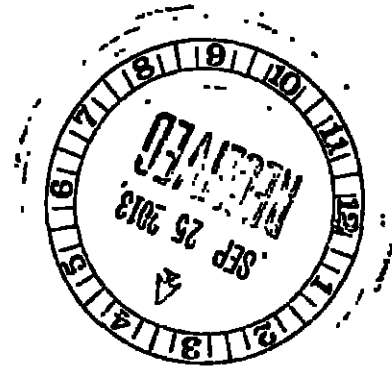
Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
NEW ORLEANS & GULF COAST
RAILWAY COMPANY, INC

Dated: September 25, 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35746



NEW ORLEANS & GULF COAST RAILWAY COMPANY, INC.
-- LEASE EXTENSION EXEMPTION --
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(4)

New Orleans & Gulf Coast Railway Company, Inc. ("NOGC"), submits this Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(4), for the extension of the term of NOGC's Lease Agreement with Union Pacific Railroad Company ("UP").

Under 49 C.F.R. § 1180.2(d)(4), the renewal of leases is exempt where the Surface Transportation Board ("Board") has previously authorized the transaction and only an extension in time is involved. The original Lease Agreement was authorized by the Board in STB Finance Docket No. 34411, *New Orleans & Gulf Coast Railway Company, Inc. – Lease Exemption – Union Pacific Railroad Company* (not printed), served October 20, 2003. Also, only an extension in time is involved. Under these circumstances, the Section 1180.2(d)(4) class exemption is applicable.

Pursuant to the Board's regulations at 49 C.F.R. § 1180.4(g), BNSF submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

The original Lease Agreement leased to NOGC the 7.02-mile rail line located between milepost 0.98, at Goldsboro, LA, and milepost 8.00, near Westwego, LA and the 4.5-mile Hooper Spur extending from the Harvey Yard, at Harvey, LA south to the end of the spur near Bayou Street. The term of the original Lease Agreement between NOGC and UP is 10 years. UP has agreed to extend the term from September 24, 2013 through September 23, 2023.

Name and address of tenant railroad:

New Orleans & Gulf Coast Railway Company, Inc.
6100 Southwest Blvd., Suite 320
Fort Worth, Texas 76109

Questions regarding this transaction are to be addressed to NOGC's counsel:

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 638-3307

(a)(1)(ii) Consummation Date

The Lease extension will be consummated after the effective date of this Notice of Exemption.

(a)(1)(iii) Purpose Sought to be Accomplished

The Lease extension is intended to enable NOGC to continue serving customers along the 7.02 miles of main line track and along the 4.5-mile Hooper Spur (the "Leased Premises").

(a)(5) List of States in which the Party's Property is Situated

The Leased Premises are located in the State of Louisiana.

(a)(6) Map

A map illustrating the Leased Premises is attached as Exhibit 2

(a)(7)(ii) Agreement

A redacted copy of the First Supplement To Lease Agreement Between UP and NOGC is attached as Exhibit 1. Un-redacted copies of the Agreement are being filed under seal simultaneously with this Notice.

Labor Protection

NOGC is agreeable to the labor protection conditions generally imposed in lease transactions as found in *Mendocino Coast Ry., Inc. – Lease and Operate*, 354 I.C.C. 732 (1978), as modified by *Mendocino Coast Ry., Inc. – Lease and Operate*, 360 I.C.C. 653 (1980).

Environmental and Historic Matters

NOGC is leasing the rail lines from UP for continued rail operations. Further Board approval is required for NOGC to discontinue or abandon any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1)

NOGC's lease will not result in significant changes in carrier operations. There will not be a diversion of (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. NOGC's lease of the rail line will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(c)(5)(ii) will not be

exceeded. Finally, the transportation of ozone depleting materials is not contemplated.

Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,

A handwritten signature in black ink, reading "Karl Morell", is written over a horizontal line.

Karl Morell
Of Counsel
Janik LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
NEW ORLEANS & GULF COAST
RAILWAY COMPANY, INC.

Dated: September 25, 2013

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35746

**NEW ORLEANS & GULF COAST RAILWAY COMPANY, INC
-- LEASE EXTENSION EXEMPTION --
UNION PACIFIC RAILROAD COMPANY**

Union Pacific Railroad Company ("UP") has agreed to extend the term of the original lease agreement between UP and New Orleans & Gulf Coast Railway Company, Inc ("NOGC"). The original agreement leased to NOGC the 7.02-mile rail line located between milepost 0.98, at Goldsboro, LA, and milepost 8.00, near Westwego, LA and the 4.5-mile Hooper Spur extending from the Harvey Yard, at Harvey, LA south to the end of the spur near Bayou Street. UP has agreed to extend the term of the Lease Agreement from September 24, 2013 through September 23, 2023.

The lease extension will be consummated on or after October __, 2013

This notice is filed under 49 C.F.R. § 1180.2(d)(4). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,

VERIFICATION

STATE OF TEXAS

)

)

ss.

COUNTY OF TARRANT

)

I, Robert Bach, being duly sworn depose and state that I am Vice President and Chief Operating Officer of New Orleans & Gulf Coast Railway Company, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief



Robert Bach

SUBSCRIBED AND SWORN TO before me this 24 day of September __, 2013, in the County of Tarrant, State of Texas.

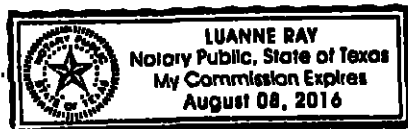


EXHIBIT 1

FIRST SUPPLEMENT TO LEASE AGREEMENT BETWEEN UP AND NOGC

First Supplemental Agreement ("Supplemental Agreement") made and entered into this 21st day of June, 2013 by and between UNION PACIFIC RAILROAD COMPANY ("UP") and NEW ORLEANS & GULF COAST RAILWAY ("NOGC")

WITNESSETH:

WHEREAS: UP and NOGC are parties to a lease agreement dated September 24, 2003 ("Lease Agreement") whereby UP leased to NOGC 7.02 miles of main line track and the 4.5-mile Hooper Spur (the "Leased Premises");

WHEREAS: On December 5, 2011, NOGC requested UP to extend the term of the Lease Agreement for an extended term so that NOGC can obtain financing to construct a new rail yard along the Leased Premises;

WHEREAS: Pursuant to Section 2.02 of the Lease Agreement, NOGC has the option to extend the Lease Agreement for an extended term of ten (10) years by providing written notice no sooner than September 23, 2012; and

WHEREAS: UP is agreeable to approving NOGC's notice to extend the Lease Agreement upon the same terms and conditions set forth in the Lease Agreement provided that all of the terms and conditions set forth in this Supplemental Agreement are satisfied, in UP's reasonable judgment

NOW, THEREFORE, it is understood and agreed between the parties hereto as follows.

SECTION 1 Additional Term.

(a) UP hereby agrees to extend the term of the Lease Agreement from September 24, 2013 through September 23, 2023.

(b) Upon termination of the Lease term in 2023, provided NOGC has not defaulted under the Lease Agreement nor has the Lease Agreement otherwise ended for whatever reason whatsoever, UP agrees to extend the Lease Agreement for an additional ten (10) year term beyond 2023, upon the same terms and conditions of the existing Lease Agreement, subject to all necessary regulatory approvals, and conditioned upon full satisfaction and accord of the Lease terms of NOGC during the 2013-2023 Lease term.

SECTION 2 New Yard.

(a) NOGC will construct a new car storage/switching yard ("New Yard") on the Leased Premises on the west side of the NOGC, as an improvement which will become part of the Leased Premises and, at termination of the Lease Agreement, shall be the property of Lessor pursuant to Section 8 of the Lease Agreement, primarily to facilitate Kinder Morgan rail service as further described in the Scope of Work and Preliminary Plans provided to UP by NOGC on December 1, 2011, and attached to this Supplemental Agreement.

(b) Based on UP's review of the preliminary plans, it is UP's understanding that the New Yard will reduce congestion for both NOGC and UP and increase velocity on the NOGC rail line by allowing NOGC to handle Kinder Morgan cars without hauling them first to the Gouldsboro Yard for classification. The location and preliminary plans for the New Yard have only been preliminarily reviewed by UP. Thus, as planning progresses, UP must be kept informed of all developments, changes and proposed revisions to the preliminary plans.

(c) The final construction plans for the New Yard are subject to UP's approval, in UP's sole and absolute discretion. NOGC shall provide UP the final construction plans and construction costs associated therewith for UP review on or before January 14, 2013. NOGC must complete construction of the proposed New Yard within six (6) months of UP's approval of the New Yard's final construction plans.

(d) ("New Yard Construction Costs"). Based upon the terms and conditions of the Lease Agreement the Supplemental Agreement, UP agrees to apply the New Yard Construction Costs. Provided, however, that in the event NOGC vacates the Leased Premises during the term (as extend) of the Lease Agreement, for any or no reason, prior to the end of the extended ten (10) year term ("NOGC Lease Termination Event"), NOGC shall reimburse UP. Upon any such NOGC Lease Termination Event, UP, in turn, will compensate NOGC for the undepreciated amount (using straight-line depreciation over the ten (10) year extended Lease term) of the actual New Yard Construction Costs.

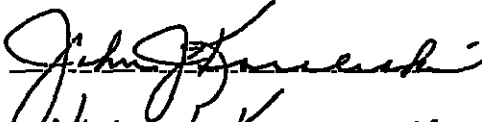
(e) The actual New Yard Construction Costs must be depreciated in full by the end of Lease Agreement's extended term beginning September 24, 2013 and terminating September 23, 2023.

SECTION 3 Surcharges.


It is agreed under the terms of the Lease that NOGC may assess a surcharge on all NOGC traffic for the sole purpose of allowing NOGC to undertake capital investments necessary to build a new rail yard and to repair the Harvey Lift Bridge. It is agreed that such surcharge is not in violation of Paragraph 22.02 of the Lease and does not preclude NOGC from otherwise participating in the fuel surcharge and revenue supplement incentive programs. With the exception of the surcharge described herein Paragraph 22.02 of the Lease remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be duly executed as of the date first above written.

UNION PACIFIC RAILROAD COMPANY

By: 
Printed: John J. Koraleski
Title: President & CEO
Date: 9/24/13

NEW ORLEANS & GULF COAST RAILWAY

By: 
Printed: Robert Bach
Title: Vice President
Date: June 20, 2013

